

 <div style="text-align: center;"> <p>Massachusetts Department Of Correction</p> <h1>POLICY</h1> </div>	Effective Date 12/21/2021	Responsible Division Deputy Commissioner, Clinical Services and Reentry
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Policy Name 103 DOC 458 QUALIFIED EXAMINER EVALUATIONS PURSUANT TO M.G.L. c. 123A	M.G.L. Reference: M.G.L. Chapter 123A §§ 1, 2, 6A, 9, 12-15	
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<p>PURPOSE: The purpose of this policy is to establish procedures and practices for qualified examiner evaluations conducted pursuant to M.G.L. c. 123A.</p> <p>RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY: Deputy Commissioner, Clinical Services & Reentry Assistant Deputy Commissioner, Clinical Services Superintendents</p> <p>CANCELLATION: This policy cancels all previous departmental or institutional policies, bulletins, directives, orders, notices, rules and procedures regarding the qualified examiners that are inconsistent with this policy.</p> <p>SEVERABILITY CLAUSE: If any part of this policy is for any reason held to be in excess of the authority of the Commissioner, such decision will not affect any other part of this policy.</p> <p>AVAILABILITY: A copy of this policy may be made available in other formats in accordance with 103 DOC 408, <i>Reasonable Accommodations for Inmates</i>.</p>		

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458.01

INTRODUCTION

Massachusetts General Laws (M.G.L.) c. 123A provides for the indefinite civil commitment of persons who have been adjudicated to be sexually dangerous persons (SDPs). Pursuant to M.G.L. c. 123A, § 1, the Commissioner of Correction appoints qualified examiners to conduct evaluations of persons who may be or have been deemed to be SDPs.

Pursuant to M.G.L. c. 123A, qualified examiners are required to render independent opinions of an individual's present sexual dangerousness in two (2) circumstances: (1) when a District Attorney or the Attorney General files a petition to have a person civilly committed as an SDP and a court has found probable cause to believe that the person is sexually dangerous (initial commitment petitions), and (2) when a person previously adjudicated as an SDP files a petition for discharge pursuant to M.G.L. c. 123A, § 9 (discharge petitions).

458.02

DEFINITIONS

Commissioner: The Commissioner of Correction.

Contractor: An individual, corporation or other entity engaged in the business of providing goods, supplies, equipment and services incidental thereto. Contractors and Vendors operating in correctional institutions are subject to all applicable rules and regulations for the Department.

Correctional Institution: Any building, enclosure, space, or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law.

Department: A Commonwealth agency, under the auspices of the Executive Office of Public Safety and Security that is charged with the detention of those committed to the custody and control of the Commonwealth, known as the Department of Correction.

Director of Forensic Psychological Services: An employee of the Department having management responsibilities for matters relating to the Community Access Board.

Massachusetts Treatment Center (Treatment Center): As created by MGL c. 123A, section 2, the correctional institution for the care, custody, treatment, and rehabilitation of persons adjudicated as being sexually dangerous pursuant to the provisions of MGL c. 123A.

Qualified Examiner: As defined by M.G.L. c. 123A, § 1, a qualified Examiner is “a physician who is licensed pursuant to section two of chapter one hundred and twelve who is either certified in psychiatry by the American Board of Psychiatry and Neurology or eligible to be so certified, or a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve; provided, however, that the examiner has had two years of experience with diagnosis or treatment of sexually aggressive offenders and is designated by the commissioner of correction. A ‘qualified examiner’ need not be an employee of the department of correction or of any facility or institution of the department.” M.G.L. c. 123A, § 1.

Sexually Dangerous Person (SDP): As defined in M.G.L. c. 123A, § 1: “Any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of sixteen years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.”

Superintendent: The chief administrative officer of a correctional institution, including the Massachusetts Treatment Center, appointed by the Commissioner pursuant to M.G.L. c. 125, § 2.

458.03

QUALIFICATIONS OF QUALIFIED EXAMINERS

- A. All persons recommended for appointment as qualified examiners after the effective date of this policy must possess the following credentials and experience:
1. Be a psychiatrist or psychologist licensed in the Commonwealth;
 2. Have at least two (2) years of experience diagnosing, assessing, evaluating, or treating sexually aggressive offenders;
 3. Be a member of an organization that promotes the treatment or assessment of sex offenders;
 4. Be certified as a Designated Forensic Professional (DFP) in Massachusetts or possess a similar certification in forensic

assessment, such as one granted by the American Board of Professional Psychology (ABPP), or, prior to appointment as a qualified examiner, complete the Contractor's training program in the forensic assessment of sex offenders, as described below.

- B. Prior to initial appointment of new qualified examiners and annually for all qualified examiners, the Contractor shall submit to the Department for each individual the following documentation: (1) evidence of completed academic work, (2) evidence of attendance at training as set forth herein, (3) evidence of current licenses, designations, and memberships in professional organizations, and (4) references from professionals who can attest to the qualified examiner's ethical practice. The documentation required herein shall be submitted to the Department no later than June 30 of each year.

458.04

ASSIGNMENT OF QUALIFIED EXAMINERS

The Contractor is prohibited from assigning a qualified examiner to conduct an evaluation of an individual if that qualified examiner has previously been retained by the individual or the individual's attorney to evaluate the individual in any capacity (*e.g.*, criminal responsibility, competency to stand trial, prior SDP proceedings, etc.). The Contractor shall ensure that this assignment process is followed.

If a qualified examiner anticipates a conflict of interest or other reason for being unable to render an objective opinion as required by the statutory or court-ordered deadline, the qualified examiner shall notify the Contractor's designee within forty-eight (48) hours of the assignment. The Contractor shall promptly assign another qualified examiner to complete the evaluation.

The Contractor shall notify designated Department staff of the assignment of qualified examiners on all initial commitment and discharge petitions.

458.05

RECORDS

Qualified examiners shall have access to all records of the offender being evaluated. Qualified examiners shall review all current and prior available records (*e.g.*, sex offender treatment, criminal, medical, mental health) of the offender being evaluated. Records may be located at the Treatment Center and/or at another institution where the offender who is the subject of the evaluation is confined or committed at the time of evaluation. The qualified examiner is responsible for ascertaining that he or she has reviewed all available records, including those provided to the qualified examiner by the Commonwealth or the offender, or counsel for Commonwealth or the offender.

The qualified examiner shall request Department records from the Department's records manager at the Treatment Center and/or at the institution where the offender who is the subject of the evaluation is housed at the time of the evaluation. The qualified examiner shall request medical, mental health and sex offender treatment records from the Department's contractual clinical provider. The Department's record manager at each institution is responsible for copying Department records housed at the institution. The Department's contractual clinical provider is responsible for copying medical, mental health and sex offender treatment records.

458.06

INTERVIEWS

- A. **Conducting and scheduling interviews:** The qualified examiner must offer the offender an opportunity to participate in a personal interview. The qualified examiner is responsible for scheduling an interview with the offender at the institution where the offender is confined.
- B. **Notice of interviews:** To the extent feasible, a qualified examiner must notify the Treatment Center Records Manager of the date and time of the interview at least seventy-two (72) hours in advance in order that notice may be provided to the offender who is the subject of the evaluation. The Treatment Center Records Manager shall issue a written notice of the date and time of the interview and the name of the qualified examiner to the offender being evaluated. To the extent feasible, this notice shall be issued at least forty-eight (48) hours prior to the interview. If the offender is confined at another institution, the Treatment Center Records Manager shall coordinate with the Records Manager at that institution for delivery of the notice to the offender. Copies of all written notices shall be filed in the offender's six-part folder.
- C. **Compliance with court orders regarding interviews:** Qualified examiners must comply with all court orders requiring audio recording of the interview or the presence of counsel at the interview. In the absence of a court order requiring audio recording or the presence of counsel at the interview, the qualified examiner may exercise his/her/their discretion as to whether to permit audio recording and/or the presence of counsel.
- D. **Notice of limit of confidentiality:** If the offender attends the interview, the qualified examiner shall inform the offender of the limits of confidentiality in a manner consistent with *Commonwealth v. Lamb*, 365 Mass. 265 (1974) (the *Lamb* warning).
- E. **Notice regarding participation in interview:** If the offender fails to attend the interview or attends the interview and declines to participate in the interview after administration of the *Lamb* warning, the qualified examiner shall immediately notify designated Department personnel.

458.07

REPORTS

The qualified examiner shall complete a comprehensive written report that adheres to professional standards set by the Department's Director of Forensic Psychological Services who shall consult with the Assistant Deputy Commissioner of Clinical Services or designee.

At a minimum, the report shall include (a) the name of the qualified examiner and his or her professional credentials (*e.g.*, M.D., Ph.D., etc.); (b) the name, date of birth, commitment number, date of SDP commitment (if any), criminal convictions and sentences, sentence effective date(s) and expiration date(s), and parole eligibility date of the offender; (c) the date and place of interview; (d) the name of any person (other than the offender and the qualified examiner) who was present for all or any part of the interview; (e) whether the interview was recorded; (f) a description of the *Lamb* warning administered to the offender and the offender's understanding of the *Lamb* warning; (g) a comprehensive description of all significant facts considered by the qualified examiner in reaching his or her opinion, including but not limited to the offender's criminal history, course of incarceration, and participation and progress in treatment, if any; (h) the offender's present mental conditions, if any; (i) the offender's statements during the interview; (j) static and dynamic risk factors; (k) placement on any risk assessment instrument or other tool(s) utilized during the evaluation; and (l) analysis of the statutory criteria of an SDP and how the offender meets or does not meet the criteria of an SDP.

The Contractor shall ensure that the report is timely delivered to the court and shall retain proof of such delivery. The Contractor shall also deliver a copy of each qualified examiner report to the designated Department staff.

458.08

TESTIMONY

Qualified examiners may be called as witnesses by either the Commonwealth or the offender who is the subject of the SDP proceeding. Qualified examiners are required to appear at the designated time and place for testimony.

458.09

TRAINING

- A. **Potential qualified examiners:** The Contractor, with the guidance and oversight of the Department's Director of Forensic Psychological Services and with the approval of the Assistant Deputy Commissioner of Clinical Services or designee, shall develop and administer a training program for

those individuals whom the Contractor and/or the Department view as potential qualified examiners.

The training program shall include, at a minimum, the following components: (a) research in the area of sex offender treatment and risk assessment; (b) the current and former treatment models utilized in Department institutions; (c) contents and review of legal/medical/therapeutic records of sex offenders; (d) analysis and use of actuarial data and instruments and other testing mechanisms in the forensic evaluation of sex offenders; (e) preparation of risk assessment reports; (f) forensic interviewing; (g) legal issues relevant to SDP evaluations; and (h) forensic testimony.

Evaluators will be deemed to have completed this training program by the Contractor in consultation with the Department's Director of Forensic Psychological Services and approval of the Department.

- B. **Qualified examiners:** At a minimum, the Contractor shall provide twenty-four (24) hours of annual training to all designated qualified examiners. All training requires the presence of the Department's Director of Forensic Psychological Services or designee. The Contractor shall submit the proposed agenda for all such trainings to the Department at least thirty (30) days in advance of the scheduled training. The Contractor shall develop training with the oversight of the Department's Director of Forensic Psychological Services and approval of the Assistant Deputy Commissioner of Clinical Services or designee. The Contractor shall not proceed with any training under this paragraph without the express approval of the Department.
- C. The Contractor shall maintain written records of attendance at all such training programs and provide such records to the Department as part of its quarterly reports to the Department. These written records shall include a list specifying the training and associated number of hours attended by each qualified examiner and potential qualified examiner.

458.10

USE OF INSTRUMENTS AND TOOLS

The qualified examiner shall also use any test or other instrument which the Contractor and Department deem appropriate to evaluate the person's present sexual dangerousness. Prior to commencing the use of any test or instrument, the Contractor shall obtain the approval of the Department's Director of Forensic Psychological Services and Assistant Deputy Commissioner of Clinical Services or designee.

Any change to the manner and method by which qualified examiners conduct assessments must be approved by the Department's Director of Forensic

Psychological Services and Assistant Deputy Commissioner of Clinical Services or designee prior to implementation.

The results and raw data generated by any test or instrument shall be submitted to the Contractor which shall preserve the results and raw data and review them to insure that the tests or instruments used were properly implemented. The Contractor shall forward the results and raw data to the Department's Director of Forensic Psychological Services who shall maintain the raw data in accordance with professional standards.

The Department and the Contractor shall meet on such basis as the Department deems appropriate to review assessment practices. The Contractor may request to meet with the Department at any time to review assessment practices.

458.11 **STRICT COMPLIANCE WITH DEADLINES**

Strict compliance with statutory and court-ordered deadlines is imperative.

458.12 **TIME LIMITS**

All procedural time limits set forth in this policy are directory and may be modified by the Commissioner or his/her/their designee(s).

458.13 **PRIVATE RIGHT OF ACTION**

Nothing contained in this policy shall provide or be construed as providing any private right of action for enforcement or for damages.